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EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Unbundled Access to Network Elements*, WC Docket No. 04-313;

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338;

Dear Ms. Dortch:

BellSouth Telecommunications, Inc. ("BellSouth") submits this response to a recent ex parte from AT&T Corp. ("AT&T"), which criticizes an impairment test for high-capacity loops, transport, and dark fiber that is based on the concentration of business lines in a central office.[1] AT&T's criticisms are misguided and are not borne out by the facts.

As a preliminary matter, there is general agreement among ILECs and CLECs alike that CLECs are not impaired without unbundled access to interoffice transport in central offices with a sufficient concentration of business lines.[2] While these parties may disagree about the requisite

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[1] Ex Parte Letter from David L. Lawson, Counsel to AT&T, to Marlene Dortch, Secretary, FCC (November 9, 2004) ("*AT&T Ex Parte*").

[2] *See, e.g.,* Comments of SBC Corp. at 78-79; Comments of Verizon Corp. at 82-83; Comments of the Association for Local Telecommunications Services, Cbeyond Communications, Blackfoot Communications, Inc., U.S. Telepacific Corp., Eschelon Telecom, Inc., Choice One Communications, Inc., Biddeford Internet Corp., Pac-West Telecomm, Inc., US LEC Corp., Lightyear Telecom, Globalcom, Inc., Megagate Broadband, Inc., Broadriver Communication Corp., Network Telephone Corp., Supra Telecommunications and Information Systems, Inc., Cavalier Telephone, LLC, New Edge Network, Inc., Conversent Communications, LLC, FDN Communications, and segTel, Inc. at 81 (finding it "reasonable to assume that multiple non-ILECs have or could provide DS3 interoffice transport along routes connecting two wire centers with 40,000 business access lines and above ..."); Comments of the Loop and Transport CLEC Coalition, Advanced Telecom, Inc., Birch Telecom, Inc., Broadview Networks, Inc., Eschelon Telecom, Inc., Grande Communications, Inc., KMC Telecom Holdings, Inc., NuVox Communications, SNiP LiNK, LLC, Talk America, Inc., Xspedius Communications LLC, XO Communications, Inc., at 82-83 (recommending a finding of no-impairment on routes that have two end points in the same LATA in a top 50 MSA, provided both ends have with at least four fiber-based collocators and serve a central office with at least 50,000 switched access business lines).

level of business line concentration, there is considerable consensus among the parties that a "meaningful relationship" exists between business lines in a wire center and competitive fiber deployment, notwithstanding AT&T's claims to the contrary.

The existence of a "meaningful relationship" between business lines in a wire center and competitive fiber deployment also is underscored by Appendix 1, which disaggregates BellSouth's 1,576 central offices by business access lines and the number of fiber-based collocation arrangements in those central offices. The data reflect that while more than half of BellSouth's central offices with 5,000 to 10,000 business lines have one or more fiber-based collocation arrangements, more than half of BellSouth's central offices with 10,000 to 15,000 business lines have two or more fiber-based collocation, whereas more than half of BellSouth's central offices with 15,000 to 20,000 business lines have four or more fiber-based collocations. In short, the greater the concentration of business lines in a central office, the greater the level of competitive fiber deployment, as measured by fiber-based collocation.

AT&T argues that "the number of lines in a wire center has *no* direct relationship to the key factors in establishing impairment," such as fiber placement cost, collocation costs, and other costs relevant to CLEC network construction.[3] However, even if AT&T's assertion were correct (which it is not), cost is not the only factor in the impairment analysis. Clearly, business lines are related to the amount of telecommunications revenues generated by business customers in the geographic area served by a particular central office. As the number of business lines increases, the corresponding amount of available revenues increases, which affords CLECs an increased opportunity to recover the costs associated with fiber placement, collocation, and network construction. Appendix 1 illustrates this commonsense notion and conclusively establishes that CLEC self-deployment of fiber – which is a critical factor in the Commission's impairment analysis – is directly related to the number of business lines in a central office.[4]

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[3] *AT&T Ex Parte*, at 1-2 (emphasis in original).

[4] While labeling BellSouth's proposed loop impairment test "preposterous" and criticizing the evidence submitted by BellSouth in support of this test, AT&T is noticeably silent when it comes to offering evidence concerning its deployment of high capacity loops. For example, AT&T's President boasted just last month that AT&T had "about 7,500 buildings on-net" as of third quarter 2004 -- a figure that represents an increase of more than 17% from the number of on-net buildings served by AT&T as of year end 2003. *Compare* Hannigan, AT&T President, Oct. 21, 1994 Earnings Conference Call (Thomson StreetEvents Transcript at p.8), *with* AT&T Corporation Form 10-K for fiscal year ending December 31, 2003 ("Our local network now ... reaches more than 6,400 buildings"). It would have been helpful had AT&T identified the central offices from which its on-net buildings are served and the concentration of business lines in those central offices, since such information would either support or discredit AT&T's claim concerning the lack of a "meaningful relationship" between business lines in a wire center and competitive fiber deployment. Not surprisingly, AT&T failed to provide such information and otherwise has refused to disclose any details about the location of its fiber facilities.

The data in Appendix 1 also eviscerates the CLEC proposals that the business line threshold for impairment purposes should be 40,000 or 50,000 business lines. Besides being completely unsupported by any record evidence, such proposals run afoul of *USTA II*.[5]

As the D.C. Circuit explained, the Commission's impairment analysis must assess not whether a market is fully competitive but rather whether CLECs are capable of competing without unbundled network elements – that is, whether "competition is possible" without UNEs in a particular market.[6] As a result, a proper impairment test must consider those markets where competition has occurred as well as those markets where competition is "possible." In the case of central offices with 40,000 or 50,000 business lines, every single one of these offices in BellSouth's region already has four or more fiber-based collocators. Thus, these size central offices are already fully competitive, and making a finding of no-impairment only in such large central offices would disregard the potential competition inquiry that the court of appeals ordered the Commission to undertake.

Sincerely,

Bennett L. Ross

BLR:kjw
Enclosures
#559747

cc: Christopher Libertelli
Matthew Brill
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Christopher Killion
Jeffrey Dygert
Pamela Arluk
Robert Pepper
Rodger Woock
Robert Tanner
Tamara Preiss

[5] *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"), *cert. denied, NARUC v. United States Telecom Ass'n*, Nos. 04-12, 04-15 & 04-18 (U.S. Oct. 12, 2004).

[6] *USTA II*, 359 F.3d at 575; *see id.* at 571 (issue in conducting impairment analysis is "whether a market is suitable for competitive supply").

APPENDIX 1

Central Offices By No. of Business Access Lines	No. of Central Offices	Percent of Central Offices	Number of Fiber-Based Collocators				
			0	1+	2+	3+	4+
Below 5,000	1145	72.8%	96.9%	3.1%	1.0%	0.1%	0.1%
5,000-10,000	199	12.6%	45.2%	54.8%	25.1%	11.1%	4.5%
10,000-15,000	94	6.0%	22.3%	77.7%	53.2%	36.2%	17.0%
15,000-20,000	56	3.6%	17.9%	82.1%	75.0%	66.1%	53.6%
20,000-25,000	32	2.0%	3.1%	96.9%	84.4%	81.3%	65.6%
25,000-30,000	20	1.3%	0.0%	100.0%	95.0%	95.0%	90.0%
30,000-35,000	9	0.6%	0.0%	100.0%	100.0%	100.0%	100.0%
35,000-40,000	3	0.2%	0.0%	100.0%	100.0%	100.0%	100.0%
40,000-45,000	3	0.2%	0.0%	100.0%	100.0%	100.0%	100.0%
45,000-50,000	4	0.3%	0.0%	100.0%	100.0%	100.0%	100.0%
Above 50,000	9	0.6%	0.0%	100.0%	100.0%	100.0%	100.0%
Total	1574	100%	78.3%	21.7%	14.4%	10.6%	7.8%